

Conduct of City Council Appeal Hearing

**50.85. Conduct of the City Council Appeal Hearing**

1. The City Council shall conduct a hearing on appeal pursuant to the requirements of this Section and the Municipal Code except as otherwise required by statute. At the beginning of the appeal hearing, the Chair shall make an announcement to those in attendance that:
  - A. States the general nature of the appeal.
  - B. Lists the applicable approval criteria.
  - C. Testimony, arguments, and evidence must be directed toward the applicable approval criteria or other criteria in the Comprehensive Plan or Development Code which the person believes to apply to the decision.
  - D. Failure to raise an issue accompanied by statements or evidence sufficient to afford the appellate decision making authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
  - E. Failure of the applicant to raise constitutional or other issues relating to the proposed condition of approval with sufficient specificity to allow the City or its designee to respond to the issue precludes an action for damages in circuit court.
  - F. The appellate decision making authority must be impartial and that members of the appellate decision making authority shall not have any bias or personal or business interest in the outcome of the application. Members of the appellate decision making authority must announce any ex parte contacts. The appellate decision making authority shall afford parties an opportunity to challenge any member thereof based on bias, conflicts of interest, or ex parte contacts.
  - G. States that if any member of the appellate decision making authority has visited the site, they describe generally what was observed.
  - H. Summarizes the procedure of the hearing.

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2. The Chair shall next ask if there is any challenge to the Mayor's or a Councilor's right to consider the appeal. Unless the challenge is based upon information revealed pursuant to Section 50.85.1.F and G, a challenging party must deliver a written document at least 24 hours prior to the hearing setting forth the reasons and authority for such challenge to the member challenged and the Mayor.
3. After the announcements and statements of Sections 50.85.1 and 2 are made, the Chair shall call for presentation of the staff report. Staff shall describe the proposal and provide a recommendation.
4. If the appeal hearing for a Type 3 decision is an *on the record* hearing, the Chair shall state that City Council review is confined to the record established before the decision making authority, that only persons who testified either orally or in writing before the decision making authority may testify before the City Council, and that the only arguments that may be raised before the City Council are arguments that were raised in the letter of appeal and those arguments raised before the decision making authority with sufficient specificity to enable the decision making authority to respond.
5. If the appeal hearing is to consider an appeal of a Type 4 decision, the Chair shall state that City Council review is not confined to the arguments that were raised in the letter of appeal.
6. The Chair shall invite testimony on the appeal to take place in the following order unless the appellate decision making authority consents to amend the order of testimony:
  - A. The applicant, if not the appellant.
  - B. The appellant, if not the applicant.
  - C. Testimony in support of the appeal.
  - D. Testimony in opposition to the appeal.
  - F. Testimony that is neither in support nor in opposition to the appeal.

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- G. Rebuttal testimony by the appellant, if the appellant is the applicant. The appellant's rebuttal is limited to responding to testimony previously submitted and shall be based solely on the evidence in the record.
- 7. The Chair shall allow final comments from staff.
- 8. The Council shall deliberate and make a decision. The Council deliberations may include questions to or testimony by City staff regarding the criteria, evidence and testimony in the record.

**50.87. Time Limits on City Council Appeal Hearing Testimony.**

1. The purpose of time limits on testimony at an appeal hearing before the City Council is to provide persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and expeditious manner. Time limits on testimony shall not be placed on staff presentations. The following time limits on testimony shall be observed during a hearing conducted by the appellate decision making authority unless the appellate decision making authority, subject to the right of the Mayor, with Council consent, waive or extend the time limits in a particular instance:
  - A. Up to and including 15 minutes for the applicant, if not the appellant, or applicant as appellant's presentation.
  - B. Up to and including 15 minutes for the appellant's presentation, if not the applicant.
  - C. Up to and including 10 minutes for a representative of a recognized NAC, homeowner association, government or government agency, or other organized group recognized by the City Council.
  - D. Up to and including 5 minutes each for other persons.
  - E. Up to and including 5 minutes of rebuttal for the applicant, if not the appellant, or the appellant who is the applicant.
2. The time limits set forth in Section 50.87.1 shall not include time taken up by questions from Council or responses thereto.

**50.88. Testimony, Exhibits, and Other Evidence before the City Council.**

1. For appeal hearings which are conducted on the record, only those persons who testified either orally or in writing before the decision making authority may testify either orally or in writing before the Council on appeal. Such testimony shall be limited to argument regarding issues raised before the decision making authority. The only issues that may be raised in an appeal hearing are the issues in the written appeal and shall be based solely upon the record of the proceedings before the decision making authority. Enlargements, illustrations, maps or other exhibits may be submitted as long as they are part of the record or are entirely derived from evidence in the record.
2. For appeal hearings which are conducted *de novo*, any interested person may testify either orally or in writing before the Council on appeal. Such testimony shall be limited to addressing the applicable approval criteria or other criteria in the Comprehensive Plan or Development Code which the person believes to apply to the decision.
3. Subject to the limitations in Sections 50.88.1 and 50.88.2, written testimony may be submitted prior to the hearing. All submittals which are more than two (2) letter sized pages must include no fewer than ten (10) complete copies of the materials being submitted. Written testimony submitted prior to the hearing must be received by the City Recorder by 5:00 p.m. on the day of the scheduled hearing.
3. Subject to the limitations in Sections 50.88.1 and 50.88.2, written testimony submitted at the hearing must be filed with the recording secretary and offered into the record before the City Council. No fewer than ten (10) copies of written comments or exhibits must be provided if those materials are submitted at the hearing.
4. Written evidence that is merely referred to in testimony but which is not provided to the City Council pursuant to this section shall not become part of the record of the proceedings.
5. At appeal hearings which are conducted on the record, written material that attempts to present new evidence or raises new issues which were not presented or raised before the decision making authority shall be rejected.

**50.89. Withdrawal of an Appeal.**

1. Before the close of an appeal hearing in front of any appellate decision making authority, any appellant may withdraw his appeal.
2. Withdrawal of an appeal is subject to the following:
  - A. The party may withdraw the appeal on its own motion, which may be submitted to the appellate decision making authority orally or in writing.
  - B. No part of the appeal fee will be refunded.
  - C. No one may re-file a withdrawn appeal.
  - D. Where multiple people or parties sign and file a single appeal document, all must consent to the withdrawal of the appeal.
3. In addition to all the requirements of Section 50.89.1 and 2, if all appeals in a matter are withdrawn, the appellate decision making authority loses jurisdiction over the action. The underlying decision is automatically re-instated under its original date of final decision.

**50.90. Expiration of a Decision**

1. Except as otherwise specifically provided in a specific decision or in this Code, a final decision made pursuant to this Chapter shall expire automatically on the following schedule unless the approval is enacted either through construction or establishment of use within the specified time period.
  - A. Five (5) years from the effective date of decision: Final Planned Unit Development (40.15.15.6) where phasing of the development is proposed.
  - B. Two (2) years from the effective date of decision:
    - Accessory Dwelling Unit (40.05.15.1)
    - Administrative Conditional Use (40.15.15.3)
    - Alteration of a Landmark (40.35.15.1)
    - Conditional Use (40.15.15.4)
    - Demolition of a Landmark (40.35.15.3)
    - Design Review Two (40.20.15.2)
    - Design Review Three (40.20.15.3)
    - Emergency Demolition of a Landmark (40.35.15.2)
    - Expedited Land Division (40.45.15.7)
    - Final Land Division (40.45.15.6)
    - Final Planned Unit Development (40.15.15.6) when there is no phasing to the development
    - Flexible Setback for Individual Lot With Endorsement (40.30.15.1)
    - Flexible Setback for Individual Lot Without Endorsement (40.30.15.2)
    - Flexible Setback for a Proposed Residential Land Division (40.30.15.3)
    - Flexible Setback for a Proposed Annexation (40.30.15.4)
    - Lot Line Adjustment (40.45.15.1)
    - Major Adjustment (40.10.15.3)
    - Major Adjustment - All Regional Center zones and South Tektronix Station Community Major Pedestrian Routes (40.10.15.4)
    - Major Modification of a Conditional Use (40.15.15.2)
    - Minor Adjustment (40.10.15.1)
    - Minor Adjustment - All Regional Center zones and South Tektronix Station Community Major Pedestrian Routes (40.10.15.2)
    - Minor Modification of a Conditional Use (40.15.15.1)

50.90.1.B.

New Construction in a Historic District (40.35.15.4)  
Preliminary Fee Ownership Partition (40.45.15.4)  
Preliminary Fee Ownership Subdivision (40.45.15.5)  
Preliminary Partition (40.45.15.2)  
Preliminary Planned Unit Development (40.15.15.5)  
Preliminary Subdivision (40.45.15.3)  
Public Transportation Facility (40.57.15.1)  
Tree Plan One (40.90.15.1)  
Tree Plan Two (40.90.15.2)  
Tree Plan Three (40.90.15.3)  
Variance (40.95.15.1)  
Wireless Facility One (40.96.15.1)  
Wireless Facility Two (40.96.15.2)  
Wireless Facility Three (40.96.15.3)  
Zero Side or Zero Rear Yard Setback for a Proposed Residential  
Land Division (40.30.15.5)  
Zero Side Yard Setback for a Proposed Non-Residential Land  
Division (40.30.15.6)

C. One (1) year from the effective date of the decision:

Design Review Compliance Letter (40.20.15.1)  
Home Occupation One (Section 40.40.15.1)  
Home Occupation Two (Section 40.40.15.2)  
Loading Determination (Section 40.50.15.1)  
Parking Requirement Determination (Section 40.55.15.1)  
Shared Parking (Section 40.55.15.2)  
Signs (Section 40.60.15.1)  
Solar Access (Section 40.65.15.1)  
Use of Excess Parking (Section 40.55.15.3)

D. No expiration date:

Director's Interpretation (40.25.15.1)  
Discretionary Annexation Related Zoning Map Amendment  
(40.97.15.4).  
Legislative Zoning Map Amendment (40.97.15.2)  
Non-Discretionary Annexation Related Zoning Map Amendment  
(40.97.15.3)  
Quasi-Judicial Zoning Map Amendment (40.97.15.1)  
Street Vacation (40.75.15.1)  
Text Amendment (40.58.15.1)  
Tree Plan Four (40.90.15.4)

[ORD 4265; September 2003] [ORD 4332; November 2004]



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2. The effective date of the decision for Type 1, Type 2, or Type 3 applications shall be the date that the signed land use order is dated and mailed, unless appealed. If a Type 1, Type 2, or Type 3 application is appealed, the effective date of the decision shall be the date of the appellate decision making authority's signed land use order is dated and mailed. The effective date of decision for a Type 4 application is thirty (30) calendar days after the Mayor signs the ordinance, unless an emergency is declared in which case the ordinance is effective immediately upon signature of the Mayor.
3. A decision shall expire according to Section 50.90.1 unless one of the following occurs prior to the date of expiration:
  - A. An application for an extension is filed pursuant to Section 50.93; or
  - B. The development authorized by the decision has commenced as defined herein.
    1. The use of the subject property has changed as allowed by the approval;
    2. In the case of development requiring construction, a construction permit has been issued and substantial construction pursuant thereto has taken place; or
    3. In the case of development authorized to be done in phases, each phase must be commenced within the time specified in the approval, or within two (2) years of completion of the prior phase if no time is specified.
    4. The 45 day to five (5) year time begins from the effective date of the decision. Appeal of a decision to LUBA does not extend the time.

**50.93.        Extension of a Decision**

1.     An application to extend the expiration date of a decision made pursuant to this Code may be filed only before the decision expires as provided in Section 50.90 or before the decision expires as provided in the appropriate subsection of the specific application contained in Chapter 40 (Applications).
2.     Except for Director's Interpretation (Section 40.25), Home Occupation (Section 40.40), Loading Determination (Section 40.50), Parking Requirement Determination (Section 40.55.15.1), Shared Parking (Section 40.54.15.2), Use of Excess Parking (Section 40.54.15.3), Sign (Section 40.60), Solar Access (Section 40.65), Temporary Mobile Sales (Section 40.80.15.1), Temporary Non-Mobile Sales (Section 40.80.15.2), all Tree Plan (Section 40.90), and all Zoning Map Amendment (Section 40.97) applications, not more than one extension may be granted for a maximum of two (2) years.
3.     An application for an extension is subject to a Type 2 procedure.
4.     An application for an extension shall be granted if the applicant demonstrates that it complies with the following:
  - A.     It is not practicable to commence development within the time allowed for reasons beyond the reasonable control of the applicant.
  - B.     There has been no change in circumstances or the applicable regulations or Statutes likely to necessitate modification of the decision or conditions of approval since the effective date of the decision for which the extension is sought.

**50.95. Modification of a Decision**

1. An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2 or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.
2. An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.
3. An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120 day requirement pursuant to ORS 227.178.
4. Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.
5. An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.
6. The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision making authority determines any one of the following:

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- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of condition to correct the mistake.
- B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
- C. The circumstances have changed to the extent that the condition is no longer needed or warranted.
- D. New or modified condition would better accomplish the purpose of the original condition.

Re-Application or Supplemental  
Application After Denial

**50.99. Re-Application or Supplemental Application After Denial**

1. If an application is denied by the decision making authority and no appeal taken, or upon appeal the appellate decision making authority affirms the denial of the decision making authority or denies the appeal, no new request for the same or substantially similar proposal shall be filed within one year after the date of the final decision subject to pre-application conference, a neighbor unless the denial is specifically stated by the decision maker to be without prejudice.
2. Only a person whose application is denied following completion of all local procedures, including local appeals allowed by right, may submit to the City a supplemental application to allow any or all other uses allowed under the existing comprehensive plan map designation for the property, pursuant to ORS 227.184.
  - A. Such an application shall include a request for any zone change, conditional use, or variance that may be required for approval of each proposal.
  - B. Such an application shall be through review meeting, completeness review, and a Type 3 procedure, provided:
    1. The City shall issue a final decision regarding such an application, including all local appeals, not more than 240 days after the City finds or deems the application to be complete.
    2. The City decision shall include findings describing the reasons for approving or denying a use for which approval is sought under this section and for any zone change or variance requested in the application.
  - C. The fee for an application under this section shall be the sum of the separate fees for each review sought pursuant to the application.

